STATUS OF PORTO RICO.

STILL A FOREIGN COUNTRY WITHIN MEANING OF THE TARIFF ACT.

Judge Townsend Decides That It Cannot Bese a Part of the Body Politic Until Congress Gives Its Approval-Has Been Acquired, but Not Incorporated-If the Treaty of Paris Is Unconstitutional So Were the Treaties Which Gave Us Louisiana and out Incorporating It an Ordinary Attribute of Sovereignty—Full Text of the Decision.

The following is the decision in full of Judge Townsend of the United States Circuit Court in the case of John H. Goetze & Co., importers, against the United States, wherein he decides that Porto Rico is still a foreign country within

United States Circuit Court, Southern District of New York. John H. Goetze & Co., vs. the United States.

the Board of General Appraisers which sustained the assessment of duty by the collector upon merchandise in question.

Townsend, District Judge. On June 6, 1899. John H. Goetze & Co. imported from Porto Rico into the port of New York 100 bales of a leaf of filler tobacco upon which duty was ed at 35 cents per pound as "filler tobacco not specially provided for," pursuant to the provisions of paragraph 213 of the Tariff act of July 24, 1897, commonly known as the Dingley act. The importer protested, claiming that merchandise was not subject to duty, cause Porto Rico was not a foreign country, and because, therefore, the "imposition of duties on goods brought from a place within the territory of the United States into a port of the United States is not lawful and valid under the Constitution." There is not dispute as to the classification of the tobacco or as to the rate of duty, provided the imposition is lawful.

A preliminary question of jurisdiction has Bradwell, recently brought to enjoin the collector from collecting the duties. Judge Lacombe denied the motion of the complainants therein for an injunction on the ground that they "have an adequate, summary and expe-ditious remedy at law under the Customs

Administrative act. The Tariff act of July 24, 1897, provides "That on and after the passage of this act, unless otherwise specially provided for in this act. there shall be levied, collected and paid upon all articles imported from foreign countries. and mentioned in the schedules herein contained, the rates of duty which are by the schedules and paragraphs respectively prescribed." (30 Stat. at Large, 151.) The Constitution provides that "all duties, imposts, and excises shall be uniform throughout the United States." (Art. 1, sec. 8.)

Before the war with Spain Porto Rico was a eign country when it was occupied by the military forces of the United States. Its status at that time is settled by the decision of the Supreme Court in Fleming vs. Page, 9 How., 03. The port of Tampico had been wrested from Mexico and was held by the United States until the final treaty of peace. During that time duties on goods imported from that port were protested on the ground that Tampico was part of the United States. Chief Justice Taney in writing the decision to the effect that Tampico was a foreign country, says:

The country was in the exclusive and firm on of the United States, and governed by its military authorities, acting under orders of the President. But it does not follow was a part of the United States or that it had ceased to be a foreign country in the sense in which these words are used in the and usages of nations conquest is a valid title while the victor maintains the exclusive possession of the conquered country. The itizens of no other nation, therefore, had a right to enter it without the permission of the American authorities, nor to hold intercourse with its inhabitants, nor to trade with them.

As regarded all other nations, it was a part of the United States and belonged to them as exclusively as the territory included in our established boundaries. But yet it is not a part

all the rights, advantages and immunities of citizens of the United States." (Art. III.) About a year later Congress extended our cusoms and navigation laws to the new territory

(15 Stat. at Large 240.) Thus we see that in all previous cession of erritory there has been a special provision in the treaty for the incorporating of the inhabitants within the United States. Whether reaty stipulation alone would be sufficient to ncorporate the territory into the Union is not clearly established. The statement of Chief Justice Marshall, supra, would lead to the condusion that such stipulation is sufficient to secure citizenship. Congress, however, has always deemed it necessary to put our custom aws in force by supplementary legislation.

This uniform course of legislative and treaty provisions shows that the incorporation of new territory into our body politic is not to be eadily inferred from a treaty, but results only

new territory into our body politic is not to be readily inferred from a treaty, but results only from express stipulations in or necessary implications therefrom. Before the date of this importation the island had been ceded to this country by the treaty of Paris, which went into effect April 11, 1899. Article II of the treaty provided that "Spain cedes to the United States the Island of Porto Rico." Article IX provided that the "civil rights and political status of the native inhabitants of the territories hereby ceded shall be determined by the Congress." (20 Stat. at Large 1754.)

The treaty further provided that "Spanish subjects, natives of the Peninsula, residing in the territory over which Spain by the present treaty relinquishes or cedes her sovereignty," may declare their intention to retain their allegiance; "in default of which declaration they shall be held to have renounced it and to have adopted the nationality of the territory in which they may reside." (Art IX, 30 Stat. at Large, 1,759.) There is no stipulation for the incorporation of the inhabitants within the Union, as there has always been in prior treaties. On the contrary, their "civil rights and political status" Spaniards who renounce their allegiance have the same status as natives. In the determination of "civil rights and political status" must be comprehended the determination of the internal relationship of the Porto Ricans to our organic law. Before cession under conquest Porto Rico was a part of the United States as to foreign nations; the defacto title to the soll was in the United States, but its inhabitants were foreigners to the Constitution, and the provision for uniformity of duties had no application there. (Fleming vs. Page supra.) By session the tiffle becomes de jure, but in the status of Porto Rico as a foreign country no change was to be made until Congress should determine its character.

The treaty vesus the sovereignty over the island in the United States, but postpones changes in the relations of its inhabitants a

to the conditions of its inhabitants and to the welfare of the United States. Since Congress, at the time of this importation, had not performed this *condition of incorporation, the status of Porto Rico, except as to other nations,

formed this condition of incorporation, the status of Porto Rico, except as to other nations, remains unchanged.

Counsel for the appellants, however, interpret the treaty as having effected a complete incorporation of Porto Rico with the United States. They reject the provision, which leaves the civil rights and political status of, the inhabitants to be determined by Congress as an unlawful attempt to grant to Congress certain powers over the territory after it has become incorporated in our Union and, therefore, as immaterial and ineffectual for any purpose. Taking the phrase "Spain cedes Porto Rico to the United States," as making Porto Rico part of the United States under the Constitution, they contend that the provision that "the civil rights and political status of the inhabitants shall be determined by Congress," is either an attempt to grant to Congress, is either an attempt to grant to Congress, is neconstitutional rights or "is merely harmless and superfluous, as it certainly is so far as political status is concerned, for it only declares what would be the law without it."

The treaty is a contract between two nations and under familiar rules it must, if possible, be so construed as to give full force and effect to all its parts.

"It is a rule in construing treaties as well as laws to give sensible meaning to all their trovisions if that be practicable. The in-

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ruling the act of the treaty making power un-less its reasons for so doing were strong and

ruling the act of the treaty making power unless its reasons for so doing were strong and imperative.

The sole constitutional question is this: May our Government by treaty accept the title of and sovereignty over territory and at the same time preserve its status as foreign country so far as internal relations to us are concerned? Can we, in other words, hold sovereignty over territory without incorporating it into the United States? Counsel for appellant, in arguing that Porto Rico is a portion of this nation, rely chiefly on the case of Cross vs. Harrison, 16 How. 184. They claim that it was there decided "not only that territory ceded by Treaty of peace becomes a part of the nation to which it is anneved, but that it cases to be foreign country within the meaning of the Tariff act so that duties accrue under such an act upon goods brought into it from abroad." It is extremely doubtful whether such doctrine can be deduced from that case. If it were to be assumed that such might be the effect of an unqualified cesson this principle would not apply in testing the constitutionality of a treaty which modifies the constitutional preserves the status of the ceded territory as foreign. The contract between the United States and Spain in express terms qualifies what the appellants claim is the legal effect of cession.

The opinion in Cross vs. Harrison does not contain any discussion of this, the only question which were discussed were not involved in the decision because the only controversy was as to the authority of the Military Governor, after cession, to collect the regular fluties in force throughout the United States without authority from Congress, and Congress had ratified his action. This alone would have been decisive. Beyond this the only question involved in the discussion was the right of the collector under the Military Governor during the interregnum to l

the same duties as were enforced elsewhere in the United States.

In what sense California was a part of the United States is not made clear. Justice Wayne, indeed, said: "By the ratification of the treaty California became a part of the United States. And, as there is nothing stipulated in the treaty with respect to commerce, it became instantly bound and privileged by the laws which Congress had passed to raise a revenue from duties upon imports and tonnage." But the suit related to the claims of foreign importers; the right claimed by them was to land goods free from duty in territory under the sovereignty of the United States and so a part of the United States to all foreigners; no question of the internal relation of California and the United States was raised; and it is not at all certain that these words of Justice Wayne

so a part of the United States to all foreigners; no question of the internal relation of California and the United States was raised; and it is not at all certain that these words of Justice Wayne do not mean simply that as to foreign nations California had become a part of the United States by perfected title and, therefore, foreigners could not violate there the law allowing them liberty to trade with the United States under specified conditions.

But even if these words of the Court were intended to describe the internal relations of the new territory, they were used in reference to the treaty by which California was ceded. That treaty not only did not negatively qualify the cession, but, on the contrary, contained such phrases as these: "Territorities previously belonging to Mexico and which remain for the future within the limits of the United States as defined by the present treaty" (Article VII.) "In consideration of the extension acquired by the boundaries of the United States as defined in the Fifth Article of this treaty" (Article XII.), and "considering that a good part of the territories which by the present treaty are to be comprehended for the future within the limits of the United States." (Article XI.), besides the general provision for the incorporation of the inhabitants as citizens already mentioned.

Apparently the intent of that treaty was to include California within the United States. Whatever is said in Cross vs. Harrison as to the relation of the ceded territory to the United States whatever is said in Cross vs. Harrison as to the relation of the ceded territory to the United States. Whatever is said in Cross vs. Harrison as to the relation of the ceded territory to the United States. The only phrase at all bearing upon that issue is:

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for as political status is concerned, for it only dark as political status is concerned, for it only dark as political status is concerned, for it only dark as political status is concerned, for it only dark as political status is concerned, for it only dark as political status is concerned, the construction and under familiar rules it must, if possible, the so construed as to give full force and effect to all its parts.

"It is a rule in construing treaties as well as laws to give sensible meaning to all their provisions if that be practicable. The interpretation, therefore, says vattel, which would render a treaty nuil and inefficient cannot be admitted, and again it ought to be interpreted in such a manner as that it may.

The construction contended for by the appellants not only fails to give sensible meaning to all the provisions of the treaty but does not necessarily determine in what the constitutions of the constitution and the constitutions of the constitution and the provisions of the treaty but does not necessarily determine in what the only point decided there was, as tasted by Mr. Justice Bradley, "the discussion upon the constitution of the constitution and the provisions of the treaty but does not necessarily determine in what the only point decided there was, as tasted by Mr. Justice Bradley, "the discussions of the Superme Court show that the only point decided there was, as tasted by Mr. Justice Bradley, "the discussion of the Superme Court show that the only point decided there was, as tasted by Mr. Justice Bradley, "the discussion of the Superme Court show that the only point decided there was, as the provision of the territory and to impose the constitution of the Constitution

treaties, is to be so limited that it cannot accept

treaties, is to be so limited that it cannot accept sovereignty without unconditional incorporation? This is what we must decide if we decide the treaty before us unconstitutional. If the treaties with France and Spain, sanctioned in the former by Congressional resolution, unquestioned in our courts and acquiesced in all these years are valid precedents; if the Treaty of Paris, giving Spain free trade with the Philippines is constitutional, then the treaty clause in question is not unconstitutional and void, and Porto Rico is still in its constitutional relations to us a foreign country until Congress shall otherwise determine.

It may be argued that, as the treaty-making power has not stipulated as to the rates of duty for the ceded territory, this power is not line cluded in the subjects left to Congressional discretion. But it is difficult to conceive any general language more apit to express an interaction to leave to Congress the determination of all such matters than that used in the treaty. Porto Rico was a foreign country and its hands of the Island as a foreign country should be continued or that the status of the Island as a foreign country when it expressly provides that the inchabitants as foreigners should continue until the essentials of a change of condition should be determined by Congress. No suggession has been made as to how the treaty can have changed the status of the Island as a foreign country when it expressly provides that the inhabitants shall retain their foreign status.

This treaty must be stored that the test treaty must be decided amountaintoinal and in that case Porto Rico remains a foreign country and the duties were properly assessed. But such a construction is not to be adopted if the language used will reasonably admit of any other interpretation. The natural and apparent meaning of the language of the Longuage and the provision of prior treaties. Therefore, the uniformity clause of the Constitution does not yet apply. It has been assumed throughout this discussion that if th

have never before had occasion to use the power to the same extent. The Constitution makers may not have thought of it, yet, as we have seen, it is an incident of full sovereignty commonly exercised at the time the Union was formed; one which is now prohibited to the States, and so must have passed to the Federal Government with the power to make war and treaties to which it is incident. For the framers of the Constitution intended that instrument not as a limitation upon the freedom of the new sovereign in acting for the States in foreign affairs; not as a check to growth, but as the organic law of a nation that can live and grow. To deny this power to govern territory at arm's length would be to thwart that intention to make the United States an unfettered sovereign in foreign affairs. For if we wage war successfully we must some time become, as many think we are now, charged with territory which it would be the greatest folly to incorporate at once into our Union, making our laws its laws, its citizens our citizens, our taxes its taxes, and which, on the other hand, international considerations and the sense of our responsibility to its inhabitants may forbid us to abandon. The construction of the Constitution which would limit our sovereign power would force us into a dilemma between violating our duty to other nations and to the people under our care on the one hand and violating our duty to ourselves on the other. That construction would in such case imperil the honorable existence of our Republic. It could not have been intended by those who framed our Constitution that we should be born a cripple among the intended or privately or authority why the United other properties or authority why the United

nations.
"There has been found, then, no reason "There has been found, then, no reason "there has been found, then the United There has been found, then, no reason other on principle or authority why the United States should not accept sovereignty over territory without admitting it as an integral part of the Union or making it bear the burden of the taxation uniform throughout our nation. To deny this power is to deny to this nation an important attribute of sovereignty. The intent of the Constitution is to make the Federal Government a full sovereign with power equal to those of other nations in its dealings for the States in foreign affairs. If the United States have this power, and we jaye found no equal to those of other nations in its dealines for the States in foreign affairs. If the United States have this power, and we have found no reason to deny it, the Treaty of Paris is constitutional. It is unnecessary to determine what limitations may control us in governing such territory, it is sufficient that we have the power to govern it without subjecting it to the burden of our national taxation. There is, then, no ground for declaring unconstitutional the treaty of cession, which accepts sovereignty on the condition that the status of the ceded territory as foreign country shall be preserved as it was until Congress shall determine it. The Treaty of Paris, then, is valid. It left the political status of the inhabitants of Porto Rico unchanged. Their status at the time of the cession was, as declared by the Supreme Court, that of inhabitants of a foreign country as regards the Constitution of the United States and within the meaning of the tariff acts. The treaty of cession did not change that status. And as Congress had not acted at the time of this importation Porto Rico was still a foreign country in the sense of the Tariff law, and duties were lawfully assessed on the articles imported therefrom. The decision of the Board of General Appraisers is affirmed.

PIRE AT NANTASKET BEACH. Property Taken Recently by the State for

Park Purposes Destroyed. BOSTON, June 15 .- Fire nearly completed to day the task of clearing up that part of Nantasket Beach which was taken by the State for park purposes early this spring. This afternoon flames were discovered bursting from the roof of the Ocean View House, owned by Park House of the Structure was soon entirely destroyed. Several of the surrounding buildings also took fire, but the surrounding buildings also took fire but the surrounding buildings also the surrounding buildings also took fire but the surrounding buildings also took fire buildings also the surrounding buildings also took fire buildings also the surrounding buildings also the surrounding buildings also the surrounding buildings also the surrounding buildings also the su of the Ocean View House, owned by David O. of the surrounding buildings also took are, but the department managed to save these. The firemen were badly handicapped in fighting the flames because of the low water pressure, as was the case a year ago this time, when two other large hotels, the Hollis and Montasco, rere destroyed.

The loss on the Ocean View falls upon the

HIGH SCORE BY WORTHINGTON.

Ralph Worthington, an old-time shooter Cleveland, Ohio, won the Consolation Hancican at the Interstate Association's successful tournament, which ended yesterday at Queens, cap of seven yards on the backmarker, Rolla Heikes, stood at the 16-yard mark and the best score made during the four days' meet.

The limit men were well in the money and
the prize winning of the crack shots was
mainly confined to the sweepstakes events.
During the day the ties for positions in the
Grand American Handicap, which could not be

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MISS RECKER IS CHAMPION.

WEE BURN GIRL WINS FINAL ROUND OF WOMEN'S M. G. A. TOURNEY.

Underhill Being Defeated by 9 up and 7 to Play-Consolution Cup Captured by Miss

Best on records from the time standpoint do speedway, but if they did Miss Genevieve Hecker would deserve the honor, for she beat Miss Ruth Underhill yesterday in the final round politan Golf Association, at the Morris County Golf Club, in one of the quickest matches ever played. Beginning at 10 o'clock in the morning the match was settled in one hour, Miss Hecker winning by 9 up and 7 to play. The bye holes were played out, Miss Underhill capturing five of them.

In achieving her unexpectedly easy victory Miss Hecker played very good golf. With driver or brassey she did not make a mistake on the eleven holes of the real contest, while she failed to get distance on only one iron shot. Putting is not Miss Hecker's strong point; that is, she did not get down any of those brilliant captures that mark the play of Miss Beatrix Hoyt. Still in only two instances the holes were settled on the long game. Miss Hecker was playing with two or three strokes to spare when the putting began, a situation in which a golfer takes matters easy.

Miss Underhill, although putting cleverly in her unorthodox way, could not regain on the green the chances she lost on the long game. Her play there was decidedly weak, for while she did not top or sclaff, she could not gain distance. On her work with the wooden clubs Miss Underhill was a third poorer than when she put out Miss Mackey, Miss Cassatt and Miss Fox in the U. S. G. A. championship last fall and gained the title of the premier woman player for the year.

So much for preamble. But before taking up the match in detail something must be said about the way the tournament has been carried out. One word would describe it-perfection -but as the credit is to be divided between two principals, it would be unfair to dismiss the matter so summarily. First of all the credit is due to the association's committee, Mrs. W. Fellowes Morgan, Miss Underhill, Mrs. A. De-Witt Cochrane, Miss Beatrix Hoyt and Mrs. William Shippen, who were ubiquitous in arranging the details. Next must be the praise of the Morris County Golf Club, which threw open its clubhouse and links in the most hospitable way. When the foursomes were coming up yesterday, as an instance of the thoughtfulness of the committee, there was an Hungarian band to help along the jolity. In all the first tournament of the association

plate without of the crack shots was mainly confined to the sweepstakes events. During the day the ties for positions in the characteristic of the day the ties for positions in the decided on Thursday on account of the rain, were shot of Capt. Jack firewer wagered \$100 that he would break 70 out of 100 targets from that with H. 6. Wheeler at 100 targets from that with H. 6. Wheeler at 100 targets and the words of the control of the contr

Our metropolitan champion. Miss Genevieve Hecker, is the best woman player of the Wes Burn Golf Club, where she took up the game in 1898. She has a very full swing with the driver and brassey and understands the difference between the various iron shots and the way to play them. All her strokes are played from the right foot, and, at the end of the full swing, Miss 'Hecker drops her right shoulder slightly, but she gets a splendid follow through. On the play of the week in beating Miss Shearson, Miss Westmore, Miss Hoyt and Miss Underhill, Miss Hecker seemed to demonstrate that she is as much in a class by herself as Miss Hoyt was when she won in 1898. The result of the meeting between the two on Thursday is not regarded by Miss Hoyt's friends, however, as decisive.

cisive.
"Miss Hecker came to us a stranger," said
Mrs. William Shippen yesterday. "But now
she is one of ourselves and we admire her and
her game."

Golfing to-day includes the Stock Exchange handleap at the Knollwood Country Club, the final round and open handleap at the Oakland Golf Club, and the Bush Cup competition at the Dyker Meadow Golf Club, which has been changed to an eighteen-hole medal play handleap qualifying round, the first eight to play off at handleap match play during the week. There will also be events at Richmond County, Marine and Field, Crescent A. C., Ardsley, Knickerbocker Field, Englewood, Morris County, St. Andrew's and many more local links.

PITTSFIELD, June 15.—The Pittsfield Country Club team beat the Wyantunuck Goif Club team of Great Barrington on the Pitt-field course this afternoon, 29 to 0. The match was eighteen

COUNTRY CLUB

STAMFORD, June 15. -The announcement that

Boston, June 15—Because A. G. Lockwood, the golfer who played at Baltusroi piedged his golf cups against a loan of \$100, the question has been raised as to whether he has violated his standing as an amateur. The United States Golf Association may be called on to decide. F. E. Wingate. President of the Allston Golf Cub, to which Lockwood belongs, said when tion that his attention was called to the matter:

"Personally, I should prefer not to express any opinion. I do not suppose anybody would care to acquire golf prizes, won by Lockwood or anybody else, in return for a loan. I den't believe anybody would want to go in for that sort of speculation. Probably he made that agreement only that his friend might feel secure." secure."
"Hasn't he been virtually playing for \$100 cash?"
That's for the United States Golf Associa-

tion to decide."
"What is the rule?" "What is the rule?"
"There's no rule that will cover exactly such a case, I suppose. Perhaps they might decide that the spirit of the rule against professionalism has been broken. I don't know."

Fine weather and some good golfing helped along the open tournament of the Oakland Golf Club yesterday, at Bay Side. The best exhibi-tion was by Travis, who had no trouble in beat-Travis ... 5 3 5 4 5 6 4 5 8-42
Rossiter ... 4 3 6 5 6 6 5 6 8 6 8-45
Travis ... 4 3 5 3 * ... -13-57
Rossiter ... 5 4 5 3 * ... -17 68

large field will be out for the handleap. The summary:
Oakland Cup—Second round—A. W. Rossiter, Oakland, beat Dr. W. A. Brown, Oakland, by 3 up and 3 to play; W. J. Travis, Garden City, a bye; W. G. Barnewell, Oakland, beat Dr. J. A. Wells, Englewood, by 7 up and 3 to play; Sidney Maddock, Crescent A. C., a bye.
Semi finals—Travis beat Rossiter by 6 up and 5 te play; Barnewell beat Maddock by 1 up.
Consolation Cup—Second round—R. T. P. Piake, Harbor Hill, beat J. B. Elmendorf, Harbor Hill, by 4 up and 3 to play; C. H. Robbins, Oakland, beat E. B. Merriman, Oakland, by 4 up and 3 to play.

GREENWICH, June 15.—The two days' tournament among the women of the Fairfield County Golf Club was finished to-day. Those who participated were: Miss Riker, Mrs. Hilliard, Miss Hoyt, Miss Mason, Miss J. Sheldon, Mrs. F. M. Freeman, Mrs. Monteith and Miss Adams. In the final Miss Sheldon beat-Miss Mason by 4 up and 3 to play. The prize was a club cup.

Syracuse University Men Will Go Abroad on

SYRACUSE, June 15 .- Manager J. W. Farley of the Syracuse University track team left for New York to-night with W. F. Lewis and T. J. Scrafford. They expect to sail on the Standard Oil Company's steamer Washington for Haroburg on Monday. J. A. R. Scott, H. G. Lee, Myer Prinstein and R. A. Waite of the team will leave New York about Wednesday on the will leave New York about Wednesday on the next Standard Oil steamer out. The men have received free transportation through the courtesy of J. D. Archbold of the Standard Oil Company. They will mess with the officers on the trip and use the officers' quarters. From Hamburg the team will go direct to Paris, where quarters will be engaged outside the cits. Here the men will put in two weeks training. The events in which the Syracusans will compete are as follows:

Prinstein—Long lump, 110 metre race, handleans. Prinstein-Long Jump, 110 metre race, handicap; 60 metre race.

Lee-400-metre race, championship: 400-metre race, handicap: 200-metre race, scratch. handicap; 20% metre race, scratch Lewis—110 metre hardies, championship: 110 metre hardies, handicap; 400 metre hardies, handicap, Walte—100 metre race, handicap; 200 metre race,

Scrafford - 800-metre race, handleap. Reader, New York-Address Conrad Knoth, cap tala, Olympian A. C., 44 Clay street, Brooklyn, N.Y.

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